

**ANGEL PLACE  
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City of Canterbury-Bankstown Council  
PO Box 8  
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Dear Alice,

## **SECTION 4.56 APPLICATION TO AMEND DA-826/2020 | 149-163 MILTON STREET, ASHBURY**

### **1. INTRODUCTION**

This letter has been prepared by Urbis Ltd on behalf of Ashbury Projects Pty Ltd (the Applicant) in support of a section 4.56 application to modify DA-826/2020 pertaining to land at 149-163 Milton Street, Ashbury (the site).

DA-826/2020 was determined by the Land and Environment Court (ref: LEC No. 2021/0089891) on 23 November 2021. The modification application has therefore been submitted under section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This modification application seeks approval for the following amendments:

- Construction of a new lockable gate and landscaped private footpath to provide access to a new single-storey dwelling proposed to be constructed within Lot 1 DP 205503, which adjoins the subject site to the north. This dwelling will be assessed subject to a separate but concurrently lodged development application to Inner West Council (within which the land is located) and as such it is expected that both Council's will consult with each other during this concurrent assessment process.
- Minor external changes to the rear gardens of Units D.T.13 and D.T.15 to accommodate the proposed pathway.

The application has been prepared in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and *Environmental Planning and Assessment Regulations 2021*.

This letter provides a description of the site, surrounding context, description of the proposed modifications and an environmental assessment of the proposed modification.

## **1.1. SUPPORTING DOCUMENTATION**

This s4.56 modification application is accompanied by the following documentation:

- Owners Consent
- Amended Architectural Plans prepared by SJB Architects
- Amended Landscape Plans prepared by Arcadia
- Stormwater Concept Plan prepared by IGS, which include works both to Lot 1 and the subject site.
- Waste Management Plan prepared by MRA Consulting Group, which include construction and demolition waste to Lot 1 as well as the path of travel and bin storage for the subject site.

## **2. SITE CONTEXT**

The site is located at 149-163 Milton Street, Ashbury within the City of Canterbury-Bankstown Local Government Area (LGA) and is legally described as Lots B and C in Deposited Plan 30778. The site has an area of 16,220m<sup>2</sup>, with a 105m frontage to Milton Street in the east, whereby vehicular access is obtained.

The site is located at the northern end of Ashbury, at approximately the mid-point between the commercial centres of Ashfield and Canterbury and approximately 8km west of Sydney CBD.

The surrounding area consists of original single and two storey detached dwellings and newly constructed two storey detached dwellings, while further north of the site, older style residential flat buildings line Milton Street.

The site forms Stage 2 of the Ashbury estate which is a former industrial estate, transitioning to a residential precinct. The lot immediately south of the subject site is currently under construction for a similar residential development which will comprise a mix of terrace-style townhouses and low-rise residential apartment buildings.

To the north of the site is Lot 1 in Deposited Plan 205503 which was formerly part of the Ashbury industrial estate and was historically used as an at-grade carpark serving the former industrial land use. This site forms part of the larger landholding and currently accommodates temporary construction equipment, materials and a metal shed associated with the construction of the Ashbury Terraces development. This lot is located in Inner West LGA, whilst the remainder of the Ashbury estate is located in Canterbury-Bankstown LGA. A separate but concurrently lodged development application to Inner West Council will be assessed by that Council with this modification application for the construction of a single-storey dwelling on Lot 1 DP 205503.

Figure 1 Aerial photograph of site



Source: Urbis

Figure 2 Site context



Source: Urbis

### 3. DEVELOPMENT HISTORY

#### 3.1. PP-2020-314

The site, together with the southern industrial site at 165-171 Milton Street, were the subject of a Council-led Planning Proposal prepared in 2017 to enable the redevelopment of the Ashbury Industrial Precinct into a high-density residential precinct. Specifically, the following amendments to the Canterbury LEP 2012 were proposed:

- Rezone the site from IN2 Light Industrial to R4 High Density Residential
- Increase the FSR from 1:1 to 1.1:1
- Introduce maximum building height controls, ranging from 8.5m, 11m, 14m, 18m and 21m

The planning proposal was gazetted on 20 March 2020.

### **3.2. DA-826/2020**

DA-826/2020 was approved by the Land and Environment Court on 23 November 2021 for the construction of a residential precinct consisting of 127 dwellings on the subject site.

Development consent was granted for *“demolition of all structures, removal of 50 trees, excavation, site remediation, civil works, new road, site landscaping and construction of 8 residential buildings including 127 dwellings over a single level common basement for parking.”*

### **3.3. DA-826/2020/B**

DA-826/2020/B was approved on 14 June 2024 for the following amendments to the development application:

*Internal and external alterations including increased floor to floor heights, lift overrun and overall increased building height, amended window layout and design, changes to unit configuration, increase in GFA, delete voids and installation of additional fire stairs to basement.*

### **3.4. DA-826/2020/C**

DA-826/2020/C was approved by the Land and Environment Court seeking development consent to amend DA-826/2020 for a range of design modifications, including to the communal open space, building envelope for Building C, basement changes and façade amendments.

### **3.5. DA-826/2020/D**

DA-826/2020/D was approved on 26 June 2024 and related to a minor error in relation to Condition 1.17 and the identified building heights.

### **3.6. DA-826/2020/E**

DA-826/2020/E was lodged with Canterbury-Bankstown Council on 10 October 2024 seeking consent for the removal of three trees on the site.

This application is still under assessment.



## **4. PROPOSED MODIFICATION**

This Section 4.56 application seeks development consent for minor design changes to enable the construction of a single dwelling on the adjoining vacant lot (Lot 1 DP 205503), which will be subject to a separate but concurrently lodged development application to Inner West Council. This lot forms part of the applicant's landholdings but, as it is located within Inner West LGA, did not form part of any previous development application for the subject site. Moreover, as this adjoining lot is isolated and does not have a strong frontage, it is necessary to provide access via the subject site to enable its redevelopment.

A detailed breakdown of the proposed design changes is summarised below and in Figure 3:

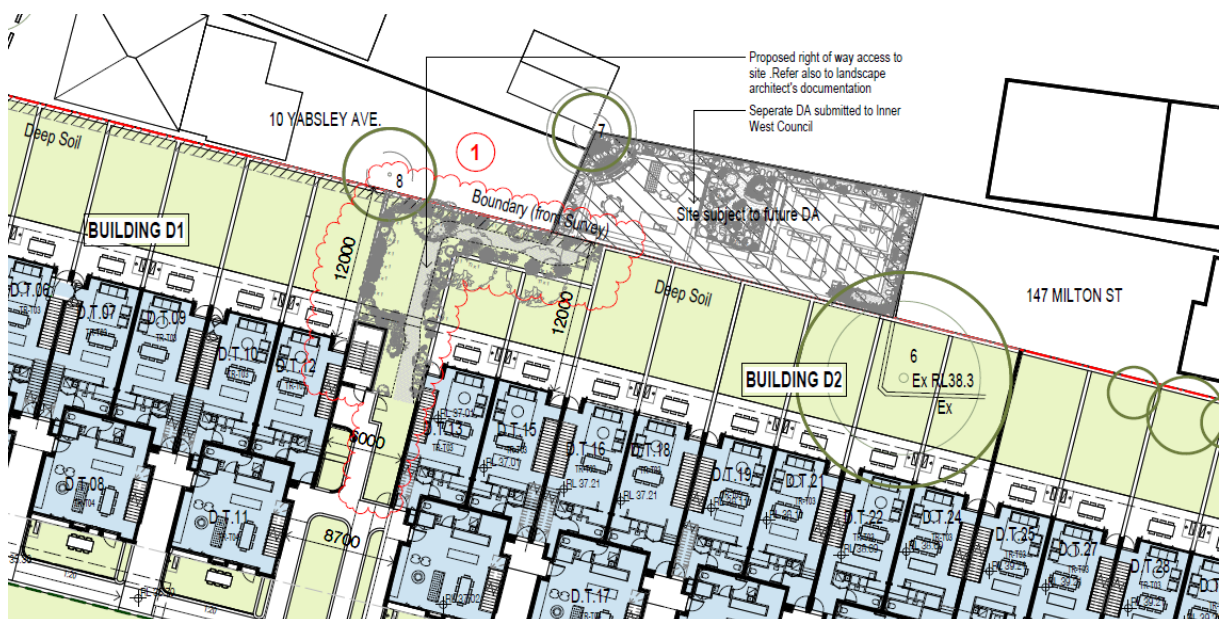
- Construction of a new lockable gate and landscaped private footpath between Building D1 and Building D2 to provide access to the proposed single-storey dwelling. This will be facilitated through the creation of a right of way easement benefiting Lot 1 DP 205503.
- Minor external changes to the rear gardens of Units D.T.13 and D.T.15 to accommodate the proposed pathway.
- Extension of existing stormwater infrastructure within the site and connection to stormwater infrastructure within Lot 1 DP 205503 to allow for the servicing of the proposed dwelling. This will be facilitated through the creation of a drainage easement benefiting Lot 1 DP 205503.
- Allocation of parking space 125 to the residential dwelling.

Figure 3 Approved and Proposed Ground Floor Plan



Picture 1 Approved Ground Floor Plan

Source: SJB Architects



Picture 2 Proposed Ground Floor Plan

Source: SJB Architects

## 4.1. AMENDMENT TO CONDITIONS OF CONSENT

This section outlines the proposed modification to the conditions of consent included in DA-826/2020. The proposed modifications are shown by a strikethrough for deleted text and *red* for new text.

### 1. Approved Development.

*Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.*

Plan Name	Sheet No.	Date	Rev.	Prepared By
Site Plan- Analysis	004	<del>18.09.2024</del> <b>07.01.24</b>	<del>7</del> <b>9</b>	SJB
Overall Plan- Basement	0101	<del>15.05.2024</del> <b>07.01.2024</b>	<del>19</del> <b>22</b>	SJB
Overall Plan- Ground Floor	0110	<del>19.02.2024</del> <b>07.01.2024</b>	<del>16</del> <b>31</b>	SJB
Overall Plan- Level 1	0111	19.02.2024	14	SJB
Overall Plan- Level 2	0112	19.02.2024	14	SJB
Overall Plan- Level 3	0113	19.02.2024	12	SJB
Overall Plan- Level 4	0114	19.02.2024	13	SJB
Overall Plan- Level 5	0115	19.02.2024	13	SJB
Overall Plan- Roof	0116	19.02.2024	12	SJB
Building A	0201	19.02.2024	10	SJB
Building B- Sheet 1	0211	19.02.2024	11	SJB
Building B- Sheet 2	0212	19.02.2024	9	SJB
Building C- Sheet 1	0221	19.02.2024	11	SJB
Building C- Sheet 2	0222	19.02.2024	11	SJB
Building D- Sheet 1	0231	19.02.2024	10	SJB
Building D- Sheet 2	0232	19.02.2024	10	SJB



Plan Name	Sheet No.	Date	Rev.	Prepared By
Building D- Sheet 3	0233	19.02.2024	9	SJB
Building E	0241	19.02.2024	10	SJB
Building F- Sheet 1	0251	19.02.2024	8	SJB
Building F- Sheet 2	0252	19.02.2024	3	SJB
Elevations- North & East	0501	03.11.2023	12	SJB
Elevations- South & West	0502	19.02.2024	13	SJB
Elevations- Internal Sheet 1	0503	29.02.2024	14	SJB
Elevations- Internal Sheet 2	0504	29.02.2024	14	SJB
Elevations- Internal Sheet 3	0505	03.11.2023	11	SJB
Sections- Sheet 1	0601	29.02.2024	11	SJB
Sections- Sheet 2	0602	03.11.2023	10	SJB
Apartment Plans- Building A & E	1401	18.09.2021	8	SJB
Apartment Plans- Building B	1402	27.10.2021	8	SJB
Apartment Plans- Building C	1403	30.08.2021	6	SJB
Apartment Plans- Building D	1404	18.09.2021	8	SJB
Apartment Plans- Building E	1405	30.08.2021	6	SJB
Adaptable Apartment Types	1406	30.08.2021	3	SJB
Materials and Finishes- Milton Street Façade	2201	30.08.2021	2	SJB
Materials and Finishes- Terraces A+E	2202	30.08.2021	3	SJB
Materials and Finishes- Building B+C	2203	30.08.2021	3	SJB
Demolition Plan	2501	18.09.2021	6	SJB
Building Height Compliance Sections	2911	19.02.2024	1	SJB

Plan Name	Sheet No.	Date	Rev.	Prepared By
Building Height Compliance Sections	2912	19.02.2024	1	SJB
Pedestrian Walkway	9908	18.09.2021	2	SJB

Landscape plans:

Drawing/Report	Name	Revision	Date
ARCADIA 149-163 Milton Street_LA DA [E] 211028	Landscape Design Report	<del>E</del> <b>A</b>	<del>28.10.2021</del> <b>19.12.24</b>
Sheet 000	Cover Sheet	E	28.10.2021
<b>Sheet 100</b>	<b>Landscape Masterplan</b>	<b>A</b>	<b>19.12.24</b>
Sheet 101	Landscape Masterplan	E	28.10.2021
Sheet 400	Plant Schedule	<del>E</del> <b>A</b>	<del>28.10.2021</del> <b>19.12.24</b>
Sheet 401	Softworks Plan	<del>E</del> <b>A</b>	<del>28.10.2021</del> <b>19.12.24</b>
Sheet 402	Softworks Plan	E	28.10.2021
Sheet 403	Softworks Plan	E	28.10.2021
Sheet 404	Softworks Plan	E	28.10.2021
Sheet 405	Softworks Plan	E	28.10.2021
Sheet 406	Softworks Plan	E	28.10.2021
Sheet 407	Softworks Plan	E	28.10.2021
Sheet 408	Softworks Plan	E	28.10.2021
Sheet 409	Softworks Plan	E	28.10.2021
Sheet 410	Softworks Plan	E	28.10.2021
Sheet 501	Landscape Details	E	28.10.2021
Sheet 502	Landscape Details	E	28.10.2021
<b>Sheet 600</b>	<b>Landscape Details</b>	<b>A</b>	<b>19.12.24</b>
Sheet 601	Landscape Specification	E	28.10.2021

Drawing/Report	Name	Revision	Date
Sheet 700	Landscape Specification	A	19.12.24

## 5. SECTION 4.55 ASSESSMENT

The proposed modifications have been assessed in accordance with section 4.55(1A) of the EP&A Act in the following sections of this correspondence.

Section 4.56 of the EP&A Act states that:

*(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if-*

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)...*

The proposed amendments can appropriately be assessed under s4.56, as elaborated in the following sections.

### 5.1. MINIMAL ENVIRONMENTAL IMPACT

The proposed modifications will have minimal environmental impact for the reasons listed below:

- **Amenity:** The proposed changes are minor in nature and will only impact a small portion of the site between Buildings D1 and D2 – which is land that would otherwise be unutilised – as well as the rear yards of two terraces, being Units D.T.13 and D.T.15. The proposed access pathway will not result in any adverse amenity impacts to any dwellings within the subject site or surrounding properties, including in relation to privacy, overshadowing or visual impact. The impacts of the proposed single-storey dwelling to be constructed on the adjoining lot will be assessed within a separate application to Inner West Council.
- **Open Space Provision:** The proposed amendments will not result in any non-compliances with communal open space, private open space or deep soil requirements for the site.
- **Built Form:** The proposed modifications do not involve any changes to the approved built form of the development.
- **Heritage:** The proposed modifications are minor in nature and will not impact on the heritage significance of the Ashbury Heritage Conservation Area.

Based on the above, the proposed modifications can be assessed in accordance with section 4.55(1A) of the EP&A Act.

## **5.2. SUBSTANTIALLY THE SAME DEVELOPMENT**

The development as modified will remain substantially the same as the approved development as outlined below:

- The proposed changes are minor in nature and will remain essentially consistent with DA826/2020.
- The proposed amendments do not alter the nature or essence of the approved development.
- The site will continue to be developed in the manner that it was intended for. The addition of an access pathway to service the proposed additional dwelling will not substantially alter the landscape design, open space provision or built form of the approved development. No changes are proposed to the number of dwellings within the subject site and the proposed modifications will not result in any non-compliances with communal open space, private open space or deep soil requirements for the site.
- When considered in the context of the entire site, the proposal will result in substantially the same development as that approved, with no new impacts resulting from the proposal that have not already been addressed.

Accordingly, the proposed modifications can be assessed in accordance as a modification to the original development in accordance with section 4.55 of the EP&A Act.

## **6. SECTION 4.15 ASSESSMENT**

The application has been assessed in accordance with the relevant matters for consideration listed in Section 4.15 of the EP&A Act.

### **6.1. ENVIRONMENTAL PLANNING INSTRUMENTS**

The proposed modifications have been assessed in accordance with the relevant State and local environmental planning instruments.

#### **6.1.1. Canterbury-Bankstown Local Environmental Plan 2023**

*Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP)* is the principal environmental planning instrument that applies to the site.

The proposed modification does not introduce any new non-compliances with the CBLEP.

### **6.2. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

No draft environmental planning instruments are relevant to this proposal.

### **6.3. DEVELOPMENT CONTROL PLAN**

*Canterbury-Bankstown Development Control Plan 2023 (CBDCP)* provides detailed planning controls relevant to the site and the proposal. Chapter 11.1 of the CBDCP provides site-specific development control relevant to the subject site.

The development as modified will continue to comply with the relevant DCP provisions as summarised below



Provision	Proposed	Complies
<b>Chapter 5.2 Residential Accommodation – Former Canterbury LGA</b>		
<b>Section 4 Multi dwelling housing and attached dwellings</b>		
Part 4.3 Private Open Space		
C1 Attached dwellings and multi dwelling housing must provide 40m <sup>2</sup> of private open space per dwelling.	Whilst the proposed modification will result in a reduction in the private open space for Units D.T.13 and D.T.15, the provided private open space of approximately 45m <sup>2</sup> , including the deck area for each unit, remains compliant with the minimum amount of 40m <sup>2</sup> .	Yes
<b>Chapter 11.1 149-171 Milton Street, Ashbury</b>		
Section 9 Deep Soil Zones		
9.1 A minimum of 15% of the site area is to be provided as deep soil zone.	The proposed modification provides for an accessible pathway across the deep soil zone along the rear boundary. The deep soil providing on the site is 18% which exceeds the minimum requirement and will not result in any adverse unacceptable impacts.	Yes
Section 10 Communal Open Space		
10.1 Communal open spaces are to be provided in accordance with Figure 12.1.7 Deep Soil Zone and Communal Open Space.	The proposed pathway will not impact the provision of communal open space within the site as it is proposed to be located between Buildings D1 and D2 in an area that does not form part of the communal open space.	Yes

## 6.4. PLANNING AGREEMENT

No planning agreements are relevant to this proposal.

## 6.5. REGULATIONS

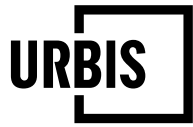
The application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021*.

## 6.6. LIKELY IMPACTS OF THE PROPOSAL

The proposed modifications have been assessed considering the potential environmental, economic and social impacts as outlined below:

### 6.6.1. Open Space Provision

The proposed modification will result in minor changes to open space provision within the site



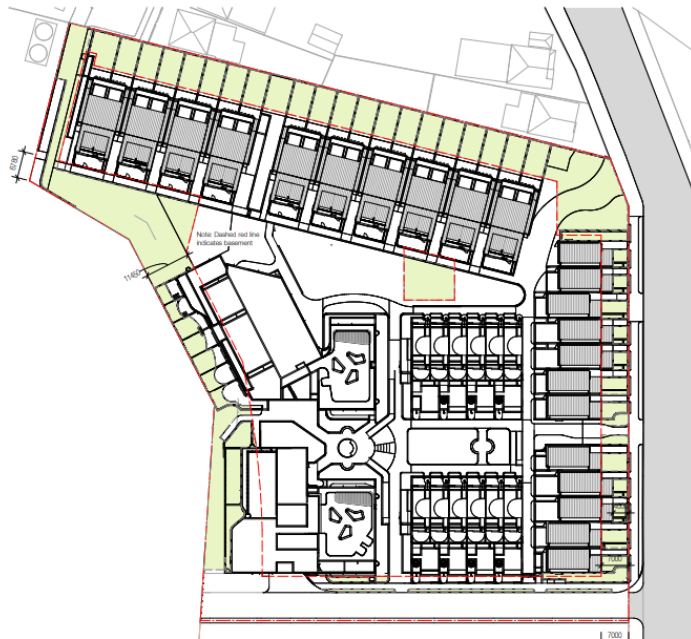
#### Deep Soil

The proposal seeks to construct a new landscaped pedestrian access pathway between the terraces in Block D, traversing behind .D.T.13 and D.T.15. The proposed deep soil area of 18% remains well in excess of that required under the DCP.

Additionally, the purpose of this modification is to facilitate access to the adjoining site at Lot 1 DP 205503 which is proposed to be developed to accommodate a single dwelling. As such, the reduction of deep soil within the subject site will be immediately offset by the increase in deep soil on the adjoining site, given that the adjoining site currently accommodates a hardstand area.

Therefore, the proposed modification will not result in any adverse impacts or non-compliance in terms of deep soil provision.

Figure 4 Approved and Proposed Deep Soil



Picture 3 Approved Deep Soil

Source: SJB Architects



Picture 4 Proposed Deep Soil

Source: SJB Architects

#### Private Open Space

The proposed modification will result in a slight reduction in the size of the private open space for Units D.T.13 and D.T.15 to accommodate the proposed access pathway. However, the private open space for both units as modified will have an area of approximately 45m<sup>2</sup>, which exceeds the minimum requirement of 40m<sup>2</sup> and thereby remain compliant with the Canterbury-Bankstown DCP requirements. Additionally, private open space of Units D.T.13 and D.T.15 will remain capable of accommodating deep soil landscaping, an open grassed area and a deck area for outdoor entertaining. The existing approved fencing enclosing the rear gardens of Units D.T.13 and D.T.15 and the adjoining residential site along the northern boundary will provide appropriate screening to ensure that there are no adverse on resident use of the private open space. As such, the impacts of the proposed reduction in private open space for two terrace units is considered acceptable.

The shadow diagrams prepared for the concurrently dwelling house also demonstrates that these terraces will continue to receive a complaint degree of solar access to their private open space.

### **6.6.2. Parking and Access**

The intention of the proposed modification is to provide pedestrian access to a single-storey dwelling proposed to be constructed on Lot 1 DP 205503 adjoining the site. This lot does not have a street frontage, meaning that access cannot be provided other than through the Ashbury Terraces development. Subsequently, this modification seeks to provide a private gated entrance between Buildings D1 and D2 to provide access to this future dwelling.

A car parking space within the existing approved basement of the Ashbury Terraces development will be reallocated for the use of the residents of the proposed dwelling. The approved development currently provides 64 parking spaces for 3-bedroom apartments, although only 56 are required under the Canterbury-Bankstown DCP, resulting in a surplus of parking. Subsequently, one of these parking spaces previously assigned to a 3-bedroom apartment will be reallocated for the use of the proposed dwelling. Residents of the dwelling will be able to access the basement via the lift in the lobby of Building C, or alternatively through the stairs adjacent to the access pathway to the dwelling if they choose.

Parking and access will be facilitated by a right of way easement for both pedestrian and vehicular access, and car parking provision, within the subject site benefiting Lot 1 DP 205503.

### **6.6.3. Stormwater Management**

The proposed dwelling on Lot 1 DP 205503 will be serviced by a series of in-ground pits and pipes within that sites boundary which are proposed to drain to an inground rainwater tank located within the subject site. This rainwater tank is proposed to be connected to the stormwater infrastructure within the broader Ashbury Terraces site, specifically the existing stormwater pit adjacent to Building D1. These stormwater management measures will be facilitated through the creation of a drainage easement the subject site benefiting Lot 1 DP 205503.

Consent is sought under this modification for the installation of the rainwater tank and its connection to the existing stormwater infrastructure.

The stormwater infrastructure located within Lot 1 DP 205503 will be assessed and approved by Inner West Council subject to the separate development application.



#### **6.6.4. Waste Management**

A Waste Management Report (**WMP**) has been prepared by MRA Consulting Group to accompany the development application for the proposed dwelling on the adjoining lot, which is being lodged concurrently with Inner West Council. Under that DA, it is proposed that the dwelling will utilise a residential bin storage room within the basement level of the Ashbury Terraces development. The WMP confirms that there is enough space within the existing approved waste storage room to accommodate the anticipated waste generation of the proposed development, in accordance with the requirements of both the *Inner West Development Control Plan 2016* and the *Canterbury-Bankstown Development Control Plan 2023*. Residents will transport waste to the basement waste storage area via the stairs adjacent to the gated entrance to the dwelling when required.

The WMP has been submitted with this application to provide further information, however the waste impacts of the proposed dwelling will be assessed under the DA to Inner West Council.

#### **6.6.5. Amenity**

The proposed modification is minor in nature and as such will not result in any adverse amenity impacts to the dwellings within the subject site or adjoining sites. No built form is proposed as part of this modification, resulting in no overshadowing impacts, and the pathway will have minimal visual impact. The existing approved fencing enclosing the rear gardens of Units D.T.13 and D.T.15 and the adjoining residential site along the northern boundary will provide appropriate screening to ensure that there are no adverse privacy impacts associated with use of the access pathway by residents of the proposed dwelling on the adjoining lot.

The amenity impacts of the proposed dwelling located on the adjoining lot will be assessed under the DA to Inner West Council.

### **6.7. SUITABILITY OF THE SITE**

The modification does not propose significant amendments or a change of use to the approved development that would make it unsuitable for the site. The development as modified will remain suitable for the site for the reasons stated in the original approval of DA-826/2020.

### **6.8. SUBMISSIONS**

It is acknowledged that submissions arising from the public notification of this application will need to be assessed by Council.

### **6.9. PUBLIC INTEREST**

The modified proposal is considered in the public interest for the following reasons:

- The proposed modifications do not introduce any new non-compliances with State and local planning controls.
- The proposed amendments will not result in any negative amenity impacts to surrounding residential properties.
- No adverse environmental, social or economic impacts will result from the proposal.

## 7. CONCLUSION

The proposed modifications have been assessed in accordance with section 4.56 and section 4.15 of the EP&A Act and are considered appropriate as summarised below:

- The proposed modifications do not impact the permissibility of the development within the CBLEP 2023.
- The proposed modification will allow for access to be provided to Lot 1 DP 205503 through the subject site, facilitating the redevelopment of an otherwise isolated site which lacks access to a street and is likely to have otherwise remain undeveloped.
- The proposed modifications are minor in nature and will not result in any adverse amenity and environmental impacts to adjoining properties, the public domain and the Ashbury Heritage Conservation Area. In other words, there are no environmental planning grounds that would limit the ability to approve the modifications sought.
- The proposal continues to comply with requirements for deep soil, private open space and communal open space provision.
- The development remains substantially the same as that to which the consent was originally granted.

Having considered all relevant matters, we conclude that the proposed modifications are appropriate for the site and approval is recommended, subject to appropriate conditions of consent.

Please do not hesitate to contact me should you wish to discuss our application in greater detail.

Kind regards,

A handwritten signature in blue ink, appearing to read "Sophy Purton", with a stylized flourish at the end.

Sophy Purton  
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